UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

April 2, 2003

In Reply Refer To:
3100/3200 (310)P

EMS TRANSMISSION 04/03/2003
Instruction Memorandum No. 2003-131
Expires: 09/30/2004

To: All Field Officials and Washington Office (WO-300) Group Managers

From: Director

Subject: Permitting Oil and Gas on Split Estate Lands and Guidance for Onshore Oil and Gas Order No. 1

Program Area: Oil and Gas Operations and Adjudication

Purpose: This Instruction Memorandum (IM) clarifies the policy, procedures and conditions for approving oil and gas operations on split estate lands (that is, lands involving private or state surface overlying federal minerals). Oil and gas operations include Applications for Permit to Drill (APD) on oil and gas leases, and Sundry Notices (SN). The purpose of this IM is to clarify that in the case of split estate land, one (1) bond is required for oil and gas operations under 43 CFR 3104, and a second bond is required to satisfy Section 9 of the Stock Raising Homestead Act of December 29, 1916, (SRHA) (43 U.S.C. 299) under 43 CFR 3814 if no agreement between the surface owner and lessee or operator can be reached. The Bureau of Land Management (BLM) also recognizes its national policy of coordination and cooperation among the BLM, federal lessees or their operators and private surface owners on split estate lands.

Policy/Action: BLM will not consider an APD or SN administratively or technically complete until the federal lessee or its operator certifies that an agreement with the surface owner exists, or until the lessee or its operator complies with Onshore Oil and Gas Order No. 1. Compliance with Onshore Oil and Gas Order No. 1 requires the Federal mineral lessee or its operator to enter into good-faith negotiations with the private surface owner to reach an agreement for the protection of surface resources and reclamation of the disturbed areas, or payment in lieu thereof, to compensate the surface owner for loss of crops and damages to tangible improvements, if any. The lessee or its operator shall include as part of the APD or SN, where surface disturbance will occur on the private surface, the surface owner's name, contact address, telephone number, and any other relevant and necessary contact information, if known. The APD or SN shall also

include a statement by the federal lessee or its operator that it has obtained one of the following:

(1) a surface owner agreement for access to enter the leased lands,
(2) a waiver from the surface owner for access to the leased lands,
(3) an agreement regarding compensation to the surface owner for damages for loss of crops and tangible improvements, or
(4) in lieu thereof, an adequate bond, sufficient in amount, to secure payment for loss of damages to crops and tangible improvements (See Attachment 1, Self-Certification Statement from Lessee/Operator and Surface Owner Identification Form).

Prior to the approval of any APD or SN, where surface disturbance will occur on the private surface, the authorized officer will ensure compliance with these requirements.

If a good-faith effort by the federal lessee, its operator or representatives has not produced an agreement with the surface owner as described in options (1), (2), or (3) above, the authorized officer of the BLM will require an adequate surface owner bond in an amount sufficient to indemnify the surface owner against the reasonable and foreseeable damages for loss of crops and tangible improvements from the proposed operations. Crops include those for feeding domestic animals, such as grasses, hay, and corn, but not plants unrelated to stockraising. Tangible improvements include those relating to domestic, agricultural and stockraising uses, such as barns, fences, ponds or other works to improve the utilization of water, but not those associated with nonagricultural development. This surface owner bond is not part of the bond obligations under 43 CFR 3104. If the surface owner objects to the sufficiency of the bond under 43 CFR Subpart 3814, the authorized officer for BLM will determine the sufficiency of the bond needed to indemnify the surface owner for the reasonable and foreseeable damages. Such a bond must be provided on Form 3814-1 (See Attachment 2, Bond for Mineral Claimants, OMB No. 1004-0110).

In the context of the bonding for reasonable and foreseeable surface damages to crops and tangible improvements from the proposed operations, BLM has prepared guidance for the federal lessee and its operator. The guidance is contained in Attachment 3 (Bond Processing Directions) which identifies what a Subpart 3814 bond is, the form of the bond, acceptable sureties and the approval and appeal procedures for the amount and sufficiency of the bond. In the instances where the lessee or its operator cannot reach agreement with the surface owner and provides a surface owner bond, the federal lessee or its operator must provide the BLM the original bond and evidence of service of process of a copy of the bond on the surface owner, and evidence that the surface owner was notified of its right to object to the sufficiency of the bond in accordance with the procedures under 43 CFR 3814. After this evidence is provided, the BLM will

independently notify the surface owner, in writing, of its rights under the procedures regarding protests and appeals to the sufficiency of the bond. The 3814 bond will be released after compensation of damages to crops and tangible improvements to the surface owner has occurred and the mineral lessee or operator requests release of the bond. BLM will make a reasonable effort to contact the surface owner and confirm that compensation has been received prior to release of the bond.

On-site visits with the lessee for the purposes of planning the development of the oil and gas resources on the lands are an important opportunity for coordination and cooperation with private surface owners. When scheduling on-site visits with the lessee for the purposes of planning the development of the oil and gas resources, the BLM will invite the surface owner to participate in the on-site visits conducted on their land. Within the context of the 15-days specified in Onshore Oil and Gas Order No. 1, the BLM will make a good-faith effort to schedule the on-site visit at a time convenient to the surface owner and the federal lessee or its operator.

The Surface Owner Agreement between the surface owner and the lessee or its operator is not to be submitted as part of the APD or SN, since it may contain confidential information regarding the agreement between the surface owner and the lessee or operator. However, a completed self-certification statement (Attachment 1) must be part of the application package. The surface owner can at the time of the on-site visit request that specific items be made part of the Surface Use Program, which is described in Onshore Oil and Gas Order No. 1. The authorized officer may include those conditions in the Surface Use Program if the authorized officer deems them beneficial to the development of the lease and consistent with conditions of approval that BLM would employ on the public lands it manages. Those conditions, if they are part of the Surface Use Program, become enforceable under the APD or SN. Non-compliance with the Surface Use Program by the lessee or its operator may result in an incident of non-compliance and assessments under the Oil and Gas Leasing Reform Act of 1987. Relief from non-compliance with conditions of the Surface Owner Agreement that are not part of the APD or SN cannot be obtained by the same process.

Background: The Bureau administers lands that are referred to as split estate on which the surface of the land has been patented, while the mineral interests are retained by the United States. Under the Mineral Leasing Act of 1920, the United States grants the right to develop the oil and gas resources to third parties. Onshore Orders have the force and effect of Departmental regulations when those orders were adopted during the Notice and Comment procedures of 5 USC 553. Onshore Oil and Gas Order No. 1 – Approval of Operations on Onshore Federal and Indian Oil and Gas Leases 48 FR 48916 (1983), requires that lessees or their operators enter into access agreements with private surface owners. In the event that there is no agreement between the surface owner and the lessee

or operator, the lessee or operator may comply with provisions of 43 CFR 3814. Therefore, this order extends the requirement of 43 CFR 3814 to all split estate lands. This IM reemphasizes 43 CFR 3814 extension to all split estate lands.

Patents issued under the SRHA reserve coal and other minerals, including oil and gas. These patents provide for the right of a mineral entrant to prospect for, mine and remove reserved minerals. They also provide that any qualified mineral entrant "shall have the right at all times to enter upon the lands ... provided he shall not injure, damage, or destroy the permanent improvements ... and shall be liable to and shall compensate the entryman or patentee for all damages to crops on the land…"

Federal lessees and operators have the right to extract oil and gas from reserved mineral deposits on such patented land, and may use as much of the surface as is reasonably required for all purposes incident to the "mining or removal" as long as one of the four following conditions is met:

(1) Surface Owner Agreement;
(2) Written consent or waiver for access to the leased lands is obtained from the private surface owner;
(3) Payment for loss or damages to crops and other tangible improvements; or
(4) Execution of a good and sufficient bond or undertaking to the United States, in an amount not less than $1,000.

Since at least 1990, Bureau policy considered a SRHA entryman or patentee fully protected under the terms of the standard oil and gas lease bond, which is required before any surface disturbing activities can be authorized. State offices were directed to release any SRHA bonds so long as the coverage under an acceptable oil and gas bond was in place. In 2000, the Wyoming State Office requested information from the Solicitor, Rocky Mountain Region, on whether BLM needed to require two bonds, one under 43 CFR 3104 covering oil and gas operations and one under 43 CFR 3814 to satisfy Sec. 9 of the SRHA. The Assistant Regional Solicitor concluded that, given the regulations and in the absence of written consent/waiver or agreement, two bonds were required. The Regional Solicitor's memorandum (See Attachment 4) was reviewed by the Solicitor and Washington Office leasing staff. The BLM is in agreement with the regional Solicitor's conclusions. BLM's prior guidance, contained in Bureau Handbook H-3104-1, concerning the use of 3814 bonds is hereby rescinded.

Time Frame: This IM is effective immediately.

Budget Impact: Implementation of the new policy in this IM can be accommodated under existing budget allocations.

Manual/Handbook Sections Affected: These requirements will be incorporated into the updated versions of BLM Manual 3160-1, BLM Handbook H-3104-1, and Onshore Oil and Gas Order No. 1.

Coordination: This IM was coordinated with the Office of the Solicitor.

Contact: For questions, call Jim Burd at (202) 452-5017; or for issues specific to adjudication of bonds call Jay Douglas, at (202) 452-0336.

Signed by:
Kathleen Clarke
Director

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

4 Attachments:

1- Self-Certification Statement from Lessee/Operator (1 p)
2- Form 3814-1 Bond for Mineral Claimants (2 pp)
3- Bond Processing Directions (4 pp)
4- Rocky Mountain Regional Solicitor's Opinion, March 2, 2000 (5 pp)

SELF-CERTIFICATION STATEMENT
FROM LESSEE/OPERATOR

SURFACE OWNER IDENTIFICATION

Federal or Indian Lease No. _____

I hereby certify to the Authorized Officer of the Bureau of Land Management that I have reached one of the following agreements with the Surface Owner; or after failure of my good-faith effort to come to an agreement of any kind with the Surface Owner, have provided a bond and will provide evidence of service of such bond to the Surface Owner:

1) _____ I have a signed access agreement to enter the leased lands;

2) _____ I have a signed waiver from the surface owner;

3) _____ I have entered into an agreement regarding compensation to the surface owner for damages for loss of crops and tangible improvements.

4) _____ Because I have been unable to reach either 1), 2), or 3) with the surface owner, I have obtained a bond to cover loss of crops and damages to tangible improvements and served the surface owner with a copy of the bond.

Surface owner information: (if available after diligent effort)

Surface Owner Name: _____

Surface Owner Address: _____

Surface Owner Phone Number: _____

Signed this _____-- day of _____-, 200__.

_____
(Name of lessee/operator)

I (Surface Owner) accept _____ do not accept _____ the lessee or operator's Surface Owner Agreement under 1, 2, or 3 above.

Signed this _____-- day of _____-, 200__.

_____
(Signature of Surface Owner if an agreement has been reached)

Form 3814-1
(March 1996)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

STOCKRAISING HOMESTEAD ACT
BOND FOR LANDS UNDER LEASE OR SALES CONTRACT

Act of December 29, 1916 (39 Stat. 862), as amended;
Act of June 17, 1949 (63 Stat. 201); Act of June 21, 1949 (63 Stat. 215);
Act of April 16, 1993 (107 Stat. 60)

FORM APPROVED
OMB NO. 1004-0104
Expires: May 31, 1999

Bond Serial Number

Homestead Patent Number

KNOW ALL MEN BY THESE PRESENTS, That _____
(Give full name(s) and address(es))

_____

☐ citizen(s) of the United States, or ☐ having declared (my) (our) intention to become citizen(s) of the United States, as principal(s), and _____
(Give full name(s) and address(es))

_____

as sureties, are held and firmly bound unto the United States of America, for the use and benefit of the owner of the hereinafter-described land, whereof homestead patent has been issued pursuant to the Act of December 29, 1916 (39 Stat. 862), in the sum of _____ dollars ($ _____), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, and each and everyone of us and them, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the aforesaid principal(s) ha__ acquired from the United States the _____ deposits (together with the right to mine and remove the same) situe, lying and being within the _____

_____

of Section _____, Township _____, Range _____ Meridian _____ State, and whereas Homestead Patent Number _____ has been issued at the _____ State Office, the surface of said above-described land, under the provisions of said Act of December 29, 1916 are now owned by _____

_____

NOW, THEREFORE, If the above-bounden parties or any of them, or their successors and assigns, or the heirs of any of them, their executors or administrators, upon demand, shall make good and sufficient recompense, satisfaction and payment, unto the said owner, his heirs, executors or administrators, or successors and assigns, for all damages to crops or tangible improvements upon said homesteaded land or to the value of said land for grazing as the said owner shall suffer or sustain or a court of competent jurisdiction may determine and fix in an action brought on this bond or undertaking, by reason of the mining and removing by the principal(s) of the above-designated mineral deposits from said described land, or occupancy or use of said surface, as permitted to said principal(s) under the provisions of said Act of December 29, 1916, as amended, by _____

_____, then this obligation shall be null and void; otherwise and in default of a full and complete compliance with either or any of said obligations, the same remain in full force and effect.

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false fictitious, or fraudulent statements or representations as to any matter within its jurisdiction..

(Continued on reverse)

Attachment 2-1

Signed this _____ day of _____, 19 _____, in the presence of:

(Signature of Witness)	(Signature of Principal)
(Address of Witness)	(Address of Principal)
(Signature of Witness)	(Signature of Surety)
(Address of Witness)	(Address of Surety)

If this bond is executed by a corporation, it must bear the seal of the corporation

The Paperwork Reduction Act of 1980 *(44 U.S.C. 3501, et seq.)* requires us to inform you that:

Information is being collected pursuant to the law *(Section 9 of the Act of December 29, 1916, as amended, 39 Stat. 864, 107 Stat. 60; 43 U.S.C. 299)*.
Information is used to establish financial responsibility for surface disturbance incurred on a Stock Raising Homestead *(SRH)* 43 CFR 3814.1.
Response to this request is required to obtain a benefit under provisions of Section 9 of the Act of December 29, 1916, *as amended, 39 Stat. 864, 107 Stat. 60; 43 U.S.C. 299)*.

Public reporting burden for this form is estimated to average 8 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management, Bureau Clearance Officer (DW-101) Denver Federal Center, Building 40, P.O. Box 25047, Denver, CO 80225-0047 and the Office of Management and Budget, Paperwork Reduction Project (1004-0104), Washington, D.C. 20503.

BOND PROCESSING DIRECTIONS

General:

For patents issued subject to the provisions of the Stock-Raising Homestead Act (SRHA) of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), mineral entrymen may need to file a bond with the Bureau of Land Management in order to mine and remove the deposits underlying the private surface. Onshore Oil and Gas Order No. 1, extends these provisions to all split estate situations. For oil and gas lessees and operators, such activities include those necessary or incidental to carry out exploration, development or production. A bond is required when the mineral entryman is unable to secure a written consent or waiver or enter into an agreement to pay compensatory damages. The right of the mineral entryman to enter, reenter and occupy as much of the surface as is required for activities reasonably incidental to extraction and removal of the mineral deposits is a specific provision of Sec. 9 of the SRHA. Because the mineral estate is considered the dominant estate, any other type of patent which reserves any portion of the mineral estate to the United States is deemed to include this right of entry. The SRHA also provides that the mineral entryman shall not injure, damage, or destroy permanent improvements of the homestead entryman or land owner and shall be liable to and shall compensate the homestead entryman or land owner for all damages to the crops on the land. (See 43 U.S.C. 299(a) as implemented by 43 CFR 3814(c)). The BLM encourages its lessees to communicate and cooperate with the landowner to obtain their consent to the development and extraction of federal minerals. When those efforts fail, a bond will be required.

When is a 3814 bond required?

A 3814 bond shall be required whenever a lessee/operator files an Application for Permit to Drill (APD) and the lessee/operator fails to include a copy of consent or waiver signed by the entryman/land owner; or when the lessee/ operator fails to include certification of an agreement to pay compensatory damages properly executed by both the lessee/operator and the entryman/land owner.

An increase to a 3814 bond shall be required whenever a lessee/operator files a Sundry Notice (SN), if the SN expands the area of private surface disturbance and the loss to crops or permanent improvements increases.

Can the 3814 bonding requirement be met by increasing the lessee/operator=s oil and gas lease bond?

No. Departmental regulations at 43 CFR 3814.1(c) state that, in lieu of a consent/waiver or agreement, a bond on Form 3814 of no less than $1,000 shall be required. The Secretary of the Interior (and any of his or her designees) is without authority to disregard his or her own duly promulgated regulations on the SRHA.

Can the 3104 bonding requirement be met by a 3814 bond?

No. Departmental regulations at 43 CFR 3104.1(a) state that prior to any surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator, shall submit an individual, statewide or nationwide bond of no less than the minimum amount for such bond to assure BLM that all lease obligations will be performed. The 3814 bond does not cover plugging and abandonment, reclamation or compliance with lease terms.

What form must be used to file a 3814 bond?

A Form 3814 Mineral Claimants Bond shall be used for all bonds submitted under 43 CFR 3814.1.

What is the amount of a 3814 bond?

A 3814 bond shall not be less than $1,000. This is the minimum, not the maximum amount of the bond. The amount shall be sufficient to indemnify the entryman or landowner for projected loss of crops and damage to tangible improvements and will be determined by the field office manager only if the surface owner objects to the bond amount. The authorized officer shall take into account the projected area of disturbance, the probable life of the well or wells needed to develop the oil and gas, and an average annual inflation rate of 5 percent.

Where is a 3814 bond filed?

A 3814 bond must be filed in the proper State Office. It shall be entered into the Automated Bond and Surety System within 5 days of receipt and maintained of record in the appropriate lease casefile. The State Office fluid minerals bond coordinator will promptly notify the appropriate field office of the filing, whether the bond is acceptable on its face and that any additional information required by the regulations has also been filed. The authorized officer must verify the bond amount as sufficient in case of protest. The acceptance decision cannot be written before the end of the 30-day protest period. The protest period begins when the entryman/land owner receives a copy of the bond. A copy of the acceptance decision will be sent to the lessee/operator, the landowner (by certified mail) and to the field office (by electronic mail).

A copy of the bond must be served on the entryman/land owner by the lessee/operator. A copy of the certified mail card showing receipt and any accompanying letter or material must be sent to the field office authorized officer. The APD or Sundry Notice is not complete until the authorized officer receives this copy, all else being regular.

What kind of surety is acceptable for a 3814 bond?

Under the regulations at 43 CFR 3814.1(c), two competent sureties (individuals) or a bonding company are the only acceptable sureties for a 3814 bond.

What does Acompetent surety@ mean?

A competent surety is one that is financially capable of paying the face amount of the bond. Regulations at 43 CFR 3814.1(c) require that, if individual sureties are used to secure the bond, the following also be filed at the same time with authorized officer B

(1) Affidavits of justification by the sureties;

(2) A certificate by a judge or clerk of the court of record, a U.S. district attorney, a U.S. commissioner, or a U.S. postmaster as to the identity, signatures, and financial competency of the sureties;

(3) Evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

The above-referenced materials shall be filed with the bond in the proper State Office. The State Office fluid minerals bond coordinator will send a copy of item No. 3 to the field office to document the well file.

If a corporate surety is used to secure the bond, it must be qualified to underwrite Government bonds. Qualified corporate sureties are listed on Department of the Treasury=s Circular 570. The circular is available online at B

http://fms.treas.gov/c570/c570.html

The circular is also published in the Federal Register on or about each July 1. Updates are also available online or through the Federal Register. You can sign up for automatic notification at the above-listed website.

What if the homestead entryman/landowner does not agree with the bond amount?

The entryman or landowner has 30 days from the date he or she receives a copy of the bond within which to object (protest) to the authorized officer. The bond will not be approved or accepted before the end of this period.

If a timely objection (protest) is received, the authorized officer will immediately evaluate it. If the authorized officer determines that the bond amount is not sufficient, a certified notice will be sent to the mineral entryman disapproving the bond, stating an acceptable amount, and stating the appeal rights of the mineral entryman.

If the authorized officer determines that the bond as filed is sufficient, the State Office fluid minerals bond coordinator will send a certified notice disallowing the objection (protest) to the homestead entryman or landowner and stating his or her appeal rights. The bond will be accepted concurrently. An electronic copy of this decision will be sent to the field office authorized officer to document the well file. The APD or SN shall also be approved concurrently, all else being regular.

What if the homestead entryman/landowner appeals the decision to disallow his or her objection?

The appeal must be filed in the proper State Office as that is the office that wrote the decision. The State Office fluid minerals bond coordinator will notify the field office authorized officer who will forward to the bond coordinator the originals of all appropriate materials. Appropriate materials include everything used to determine the bond amount, and all correspondence had with the lessee/operator or entryman/landowner about the bond.

The filing of an appeal does not stay approval of the APD or SN. Operations may continue during the pendency of the appeal.

What data entry must be made for a 3814 bond?

Data entry in the Automated Bond & Surety System will be sent by separate IM.

When will the 3814 bond be released?

The 3814 bond will be released after compensation of damages to crops and tangible improvements to the surface owner has occurred if any damages actually resulted from the lessee or operator's actions and the lessee or operator requests release of the bond. BLM will make a reasonable effort to contact the surface owner and confirm that compensation has been received prior to release of the bond.

United States Department of the Interior

OFFICE OF THE SOLICITOR
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March 2, 2000

Memorandum

To: Michael Madrid, Minerals/Lands Authorization Group, Wyoming State Office, Bureau of Land Management

From: Lowell Madsen, Assistant Regional Solicitor

Subject: Bonding Requirements for Lands Patented Pursuant to the Stock-Raising Homestead Act

During John Kunz and my February 9, 2000, meeting with you and others from the Wyoming State Office and the Buffalo Field Office, we discussed several problems relating to the bonding requirements for oil and gas operations on lands patented under the Stock-Raising Homestead Act of December 29, 1916 (SRHA), 43 U.S.C. §§ 291-301. One of the problems arises from the directive in Instruction Memorandum No. WY-99-57 to use a single oil and gas bond issued pursuant to 43 C.F.R. § 3104, a 3104 Bond, to cover standard oil and gas operations as well as the compensatory damage provisions found in Section 9 of the SRHA. John and I were asked to determine whether the BLM and an oil and gas operator could agree to use two separate bonds, a 3104 Bond, to cover standard oil and gas operations and a 3814 Bond to satisfy the bonding requirements of Section 9 of the SRHA. It is our opinion that there is nothing in the relevant statutes or regulations to prevent the BLM from doing so. Indeed, the regulations, as currently constituted, require the use of the two bonds.

Section 9 of the SRHA provides that a person who has acquired from the United States the right to mine and remove the minerals reserved to the United States in lands patented pursuant to that Act may re-enter and use so much of the surface as may be required for all purposes reasonably incident to the mining and removal of the minerals. However, prior to re-entry, the person who has the right of re-entry must first (1) secure the written consent of the surface owner; or (2) reach an agreement with the surface owner as to the amount that will be paid to compensate for damages to crops or other tangible improvements that will result from mining and removing the reserved minerals; or (3) produce a good and sufficient bond to insure payment of damages

to crops or tangible improvements of the surface owner. 43 U.S.C. § 299.

The regulation 43 C.F.R. § 3814.1(c) (1998) provides that the bond required by Section 9 of the SRHA must be on Form 3814, a 3814 Bond. [2] This regulation has not been superseded or modified. The regulations do not provide, as they once did, that separate bonds for the protection of surface owners are no longer required. Nor is there anything in the current regulations authorizing the use of any other bond, such as a 3104 Bond, for that purpose. Indeed, according to the regulations in 43 C.F.R. Part 3104, such a bond would be inadequate.

A 3104 Bond does not cover damage to crops or other tangible improvements. A 3104 Bond covers only the plugging of wells, the reclamation of the leased lands, and the restoration of lands and surface waters. 43 C.F.R. § 3104.1(a) (1998). [3] Nor does it appear that a 3104 Bond can be modified by increasing its amount to cover damage to crops or other tangible improvements. "[I]n

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[1] The bond must be sufficient to cover damages resulting from the diminution of the value of the land for grazing purposes as well as the loss of crops and damage to tangible improvements. William and Pear Hayes, 101 IBLA 1101 (1988); William C. Hayes, et ux., 122 IBLA 68 (1992).

[2] The regulation 43 C.F.R. § 3814.1(c) (1998) provides that the "bond on Form 3814 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved." (Empnasis added.) Accordingly, only a properly executed bond on Form 3814 will satisfy the regulation, a regulation that is as binding upon the Department as it is upon those doing business with the Department. Vitarelli v. Seaton, 359 U.S. 535, 539 (1959); Chapman v. Sheridan Wyoming Coal Co., 338 U.S. 621, 629 (1950); Alamo Ranch Co., 135 IBLA 61 (1996).

[3] 43 C.F.R. § 3104.1(a) (1998) provides:

> The bond amounts shall be not less that the minimum amounts described in this subpart in order to ensure compliance with the act [Mineral Leasing Act of 1920], including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s). . . .

no circumstances shall it [a 3104 Bond] exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding." 43 C.F.R. § 3104.5 (1998).

Accordingly, a 3104 Bond cannot be substituted for a 3814 Bond. In the absence of surface owner consent or an agreement as to the amount to be paid in damages, an oil and gas operator who wishes to re-enter lands patented pursuant to the SRHA must provide a 3814 Bond as well as a 3104 Bond.

The regulations do not, however, require the filing of a 3814 Bond separate from the filings that are associated with an Application for Permit to Drill (APD). A 3814 Bond and a 3104 Bond must be a part of an APD filed in connection with oil and gas operations on lands patented pursuant to the SRHA.

An APD must be accompanied by "Evidence of bond coverage as required by the Department of the Interior regulations," 43 C.F.R. § 3162.3-(d)(3). Those regulations require that a 3814 Bond, together with evidence of service of a copy of the bond on the surface owner, must be filed with the BLM. 43 C.F.R. § 3814.1(c). Accordingly, the APD must be accompanied by a 3814 Bond.

The procedural rights allocated to a surface owner in 43 C.F.R. § 3814.1 are preserved in the regulations governing the submission and approval of an APD. The BLM cannot approve a 3814 Bond until after 30 days from the date of its receipt have expired. 43 C.F.R. § 3814.1(d). An APD cannot be approved until it has been posted for public inspection for at least 30 days after its receipt. 43 C.F.R. § 3162.3-1(g) and (h). Thus, the BLM cannot approve the 3814 Bond submitted with an APD for at least 30 days after it is filed with the BLM. During the 30-day waiting period, a surface owner may "object" to the approval of the 3814 Bond. 43 C.F.R. § 3814.1(d). During the 30-day posting period for an APD, the BLM is to consult with "interested parties," 43 C.F.R. § 3162.3-1(h), which would normally include a surface owner. A surface owner must be given an opportunity to appeal from a decision approving a 3814 Bond. 43 C.F.R. § 3814.1(d). If the BLM approves an APD, thereby rejecting a surface owner's objection to the sufficiency of a 3814 Bond, the surface owner has the right to have the approval decision reviewed pursuant to the regulations 43 C.F.R. §§ 3165.3 and 3165.4.

In view of the above, it is clear that Instruction Memorandum No. WY-99-57, which provides that, insofar as oil and gas activities are concerned, a separate 3814 Bond is no longer required if an

operator provides a 3104 Bond, is inconsistent with current regulations.

IM WY-99-57 relies upon two Interior Board of Land Appeals decisions, Coquina Oil Corporation, 41 IBLA 248 (1979), and Theo Gassin, 55 IBLA 257 (1981). When those decisions were issued by the IBLA, a departmental regulation specifically provided that "Separate bonds for the protection of surface owners are no longer required." 43 C.F.R. § 3104.2(d) (1979). That regulation was deleted when 43 C.F.R. Part 3100 was revised in 1983. See 48 Fed. Reg. 33662, July 22, 1983. [4] Because the regulation was deleted, both Coquina and Gassin were effectively overruled by the IBLA in Gary Maughan, 105 IBLA 206 (1988). [5]

In Maughan, the Board held that the regulations in effect when that decision was issued in 1988 did not provide that a separate bond was not required. 105 IBLA at 209. As the pertinent regulations in effect when Maughan was issued are the same as the current pertinent regulations, it follows that, as shown above, the current regulations do not provide that separate bonds are not required.

It should be noted that the regulation 43 C.F.R. § 3814.1(d) gives either a surface owner or a mineral developer 30 days within which to appeal to the "Director of the Bureau of Land Management" from a decision by an authorized officer regarding the adequacy or inadequacy of a proffered bond. The IBLA has held that such appeals are properly made to that Board rather than the Director. Brock Livestock Co., Inc., 101 IBLA 91, 97 n.6 (1988). The Board held:

> The regulation codified at 43 C.F.R. § 3814.1 was promulgated prior to the creation of this Board and describes an appeal procedure which is no longer in effect. Since none of the limitations upon Board jurisdiction enumerated at 43 C.F.R. § 4.410(a) apply, in this circumstance appeal is properly made to the Board.

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[4] There is nothing in the preamble to the regulations published in 1983, or in the preamble to the regulations currently in effect, published in 1988, to explain why the Department eliminated the regulation providing that separate bonds for the protection of surface owners were not required. See 48 Fed. Reg. 33653, July 22, 1983, and 53 Fed. Reg. 22820-21, June 17, 1988.

[5] On reconsideration, Maughan was modified in part on a point not relevant here. See Gary Maughan, 105 IBLA 210A (1989).

The Board also held that 43 C.F.R. § 4.21(a) would suspend the finality of the BLM's decision regarding the adequacy of a bond pending the appeal. 101 IBLA at 97. However, Brock involved a bond filed by a mining claimant. [5] It is our opinion that a decision regarding the adequacy of a 3814 Bond, which must be submitted by an oil and gas operator as a part of an APD on lands patented pursuant to the SRHA, is subject to review and appeal pursuant to the regulations in 43 C.F.R. Part 3165. The regulation 43 C.F.R. § 3165.4(c) provides that decisions issued under Part 3100 shall remain effective pending review unless the IBLA determines otherwise in response to a petition for stay.

To summarize, it is our opinion that one who wishes to conduct oil and gas operations on lands patented pursuant to the SRHA must, in the absence of a waiver or an agreement to pay damages, submit a good and sufficient bond on Form 3814 to insure the payment of damages to crops or other tangible improvement on the surface of the land in addition to the bond required by 43 C.F.R. Part 3104. It is also our opinion that a decision approving an APD over an objection by a surface owner that a 3814 Bond is inadequate will be in full force and effect pending appeal unless a stay is granted by the IBLA.

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[5] The 1916 Stock-Raising Homestead Act was amended by the Act of April 16, 1993, 43 U.S.C.A. § 299, which deals with the location of mining claims on lands patented under the 1916 Act.